

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Unbundling of Local
Exchange Carrier Common
Line Facilities

RM-8614

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REPLY COMMENTS OF TIME WARNER COMMUNICATIONS HOLDINGS, INC.

Time Warner Communications Holdings, Inc. ("TWComm"), by its attorneys, hereby submits the following reply to initial comments submitted in response to the petition filed by MFS Communications Company, Inc. ("MFS"), requesting the initiation of a rulemaking proceeding addressing the unbundling of the "common line" (i.e. local loop) element of Tier 1 local exchange carriers' interstate switched access services.

As an emerging provider of alternative local telecommunications services, TWComm concurs wholeheartedly with those commenting parties who have urged the Commission, as it considers MFS' petition, simultaneously to take action to ensure that other issues which are critical to the development of a fully competitive marketplace for local services -- including, in particular, collocation, intercarrier compensation, and number portability issues -- are appropriately and expeditiously

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addressed.¹ The need for and value of immediate action by the Commission, within the scope of its jurisdiction, in each of these important areas, cannot be overstated. The Commission has taken some significant steps in recent years, most notably in its expanded interconnection proceeding (CC Docket 91-141), to introduce policies and procedures that would enhance the potential for competition in certain areas of local telephony (i.e., the provision of interstate special access and switched transport services). Nevertheless, resistance by incumbent LECs and some state commissions to changes in the long-standing monopoly provider model for local services continues to hamper efforts by TWComm and other alternative service providers to compete even in these limited areas.

In this regard, as Teleport points out, "[a]lthough the Commission has issued orders requiring the filing of collocation tariffs, it still has outstanding long pending investigations into the reasonableness of the prices, terms and conditions of [LEC collocation] tariffs."² As TWComm and other participants in these ongoing proceedings can attest, efforts by the Commission to resolve issues relating to pricing and other terms of interconnection continue to be frustrated, as the LECs persist in their efforts to defend tariff terms and conditions that are

¹ See Comments of Teleport Communications Group, Inc. ("Teleport Comments"); Comments of Cox Communications, Inc. ("Cox Comments"); also see Comments of Sprint Corporation ("Sprint Comments") at 1-3.

² Teleport Comments at 2-3.

demonstrably anticompetitive, while repeatedly (and thus far successfully) seeking to deny or limit public access to tariff support information which might provide further evidence of the unreasonableness of their proposals.³ TWComm again urges the Commission to reject these LEC efforts to forestall competition. Rather, the Commission should, as Teleport suggests, "move as swiftly as possible to resolve its pending investigations of the LECs' interim and permanent collocation tariffs and to prescribe reasonable rates and terms for those interconnection arrangements."⁴

As the foregoing discussion and the MFS petition itself suggest, the establishment of appropriate intercarrier arrangements for the interconnection of prospective new entrants with the incumbent LEC network is the single most important factor in the development of a competitive marketplace for local telephony services. One particularly critical element of such arrangements involves the compensation scheme governing the exchange of traffic between the incumbent LEC and its would-be competitors. In its comments, Cox notes that the Commission has already articulated a requirement of "mutuality of compensation" for the termination of traffic and has begun to examine intercarrier compensation issues in the context of its CMRS

³ See e.g., Opposition of Time Warner Communications Holdings, Inc. to LEC Direct Cases, CC Docket No. 94-97, Phase I (filed April 4, 1995) at 2-10.

⁴ Teleport Comments at 6.

interconnection proceeding.⁵ TWComm agrees with Cox that the issue of mutual compensation must be addressed in the wireline context as well, and urges the Commission to take steps to establish a federal policy in this area. In addition, TWComm concurs with Cox's suggestion that a "sender keep all" compensation arrangement would appear to provide an equitable and economically efficient means of addressing this issue, which the Commission should consider in the context of the instant proceeding and/or other suitable venues.⁶

TWComm also agrees with those comments which urge the Commission to take prompt action to ensure the availability of "true" or "full" number portability at the earliest possible date.⁷ As Cox observed in its initial comments, issues of numbering and dialing parity and number portability directly affect the substitutability of a would-be LEC competitor's products and are therefore critical to the development of effective competition in local services.⁸ Accordingly, TWComm urges the Commission to pursue development of a federal policy

⁵ Cox Comments at 3.

⁶ See Cox Comments at 4-5. In comments submitted in the Commission's CMRS interconnection proceeding, TWComm's affiliate, Time Warner Telecommunications ("TWT") urged the adoption of a "sender keep all" model for LEC-CMRS intercarrier compensation. Reply Comments of Time Warner Telecommunications, CC Docket No. 94-54 (filed October 13, 1994) at 7-8.

⁷ See Teleport Comments at 2, 6; Cox Comments at 5-10; Sprint Comments at 2.

⁸ Cox Comments at 5-6.

which provides for the implementation of full number portability as soon as possible.

In its recent Declaratory Ruling and Order concluding that Ameritech's proposed plan for addressing an anticipated shortage of telephone numbers in Northern Illinois improperly discriminated against wireless service providers and was therefore unlawful, the Commission reiterated its "broad authority to oversee telephone numbering issues."⁹ TWComm believes that the Commission has sufficient authority, under Titles I and II of the Communications Act, to establish a national policy that encourages or requires implementation of full number portability, as a means of preventing anticompetitive discrimination and other unlawful practices and promoting the availability of "rapid, efficient, Nation-wide and world-wide wire and radio communication service. . . ." ¹⁰

In furtherance of these objectives, both "full" number portability and any "interim" approaches which may be allowed should be configured to ensure that customers who change local exchange service providers will, to the greatest extent possible, be able to retain their existing telephone numbers and use the

⁹ Declaratory Ruling and Order, In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, FCC 95-19 (released January 23, 1995), ¶ 9.

¹⁰ 47 U.S.C. § 151. To the extent that any uncertainty may exist with regard to the Commission's ability to act in this area, TWComm believes that it is all the more important that the Commission take immediate action to address the substantive policy issues and any jurisdictional issues associated with the implementation of full number portability.

same area codes and dialing pattern used by the incumbent LEC's customers. TWComm also agrees with Cox's observation that alternatives such as remote call forwarding are inherently inferior¹¹ and believes that such arrangements should be tolerated only for a limited "interim" period, pending implementation of full number portability.¹² TWComm further believes that the costs of implementing full number portability should be distributed among all local service providers, including the incumbent LEC, in proportion to their respective share of all access lines in the combined local networks.

One final matter which TWComm wishes to address relates to the unsupported and unsupportable assertion by CompTel, in its initial comments, that there is a compelling need to impose a broad range of regulatory requirements -- including "equal access" obligations, rate regulation, resale requirements, tariffing obligations, etc. -- on new entrants, as well as the incumbent LECs.¹³ In its Virtual Collocation Remand Order, the Commission declined to impose "reciprocal" expanded

¹¹ As Cox indicates, "interim" solutions waste valuable numbering resources, provide inferior service (e.g. limiting the features available to consumers), and may be more costly to new entrants than appropriately-priced "true" number portability. Cox Comments at 8-9.

¹² In recognition of its inherent inferiority and in order to provide some financial incentive for LECs to move expeditiously toward "true" number portability, "interim" number portability should be provided by LECs at no charge or at substantial discounts until full number portability is implemented.

¹³ See Comments of the Competitive Telecommunications Association ("CompTel Comments") at 15-18.

interconnection requirements on competitive access providers and other prospective interconnectors, concluding that there was "no reason to impose expanded interconnection requirements on parties that lack market power and do not control bottleneck facilities."¹⁴ For the same reason, there is no basis for imposing a host of other potentially burdensome regulatory requirements, adopted to control the incumbent LECs' demonstrated ability to utilize their monopoly power to impede competition at the expense of "captive" consumers, on new entrants, such as TWComm, who have no such power.

If an alternative provider of local services were to attempt to impose onerous restrictions on its customers' ability to utilize particular interexchange carriers, for example, the affected customers in all likelihood would simply revert to using the incumbent LEC's services. More generally, the availability of alternative providers of local services, including the incumbent LEC, will provide a powerful deterrent to any attempt by a new entrant to limit consumer options, or to impose excessive or discriminatory charges. Imposition of "equal access" requirements or other LEC-style regulatory obligations on

¹⁴ In the Matter of Expanded Interconnection with Local Telephone Company Facilities, 9 FCC Rcd 5154, 5184 (1994). Similarly, the Commission recently reiterated that "the presence or absence of market power is an important factor in determining whether the imposition of a general interconnection obligation in the form of an equal access obligation on CMRS providers" would serve the public interest. Second Notice of Proposed Rulemaking, In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, FCC 95-149 (released April 20, 1995) at ¶ 36.

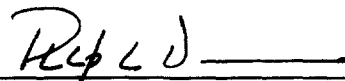
such carriers is therefore not necessary to protect competition or consumers. In addition, the imposition of extensive and unnecessary regulatory obligations would impose substantial costs and inefficiencies on alternative local service providers, which would only make it more difficult for the new entrants to establish themselves in the marketplace, thereby undermining their ability to provide a meaningful marketplace check against anticompetitive behavior by the incumbent LEC.

CONCLUSION

By taking prompt action to establish a federal policy framework for addressing the collocation, intercarrier compensation, and number portability issues described herein, the Commission would be making an immeasurable contribution to the emergence of truly competitive marketplace for local telecommunication services. For the foregoing reasons, TWComm urges the Commission, in considering MFS' petition, simultaneously to take steps to ensure that these issues are confronted and appropriately resolved in an expeditious manner.

Respectfully submitted,

**TIME WARNER COMMUNICATIONS
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CERTIFICATE OF SERVICE

I, Dennette Manson, hereby certify that on this 25th day of April, 1994, I caused a copy of the Reply Comments of Time Warner Communications Holdings, Inc. to be served by first-class mail, postage prepaid, to the following attorneys for MFS Communications Company, Inc.:

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